

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

PATRICK MARTINEZ, as Trustee, etc.,

Plaintiff and Respondent,

v.

MARIA E. MARTINEZ,

Defendant and Appellant.

E069042

(Super.Ct.No. MCC1500402)

OPINION

APPEAL from the Superior Court of Riverside County. Raquel Marquez and Gary B. Tranbarger, Judges. Dismissed.

Law Offices of James R. Gorman and James R. Gorman for Plaintiff and Respondent.

Law Offices of Carl Hilliard and Carl Hilliard for Defendant and Appellant.

I.

INTRODUCTION

This appeal arises out of litigation involving distribution of assets from a trust that included two residential properties; one located in Wildomar and the other located in Santa Ana. Plaintiff and respondent, Patrick Martinez (plaintiff), son of the original trustee, filed suit against defendant and appellant, Maria E. Martinez (defendant). The parties subsequently attended a mandatory settlement conference and recited the parties' oral settlement on the record. The agreement required plaintiff to make three payments to defendant that totaled \$169,000. At the time of the mandatory settlement conference in October 2016, the parties' counsel agreed to prepare a written settlement agreement.

Subsequent thereto, defendant retained new counsel who was not present at the October 2016 settlement conference and would not agree to the settlement terms as recited on the record. Plaintiff's counsel told defendant's new counsel that the settlement included defendant's share of the trust from the sale of the Santa Ana property and was full settlement of the case. However, defendant's new counsel asserted the settlement in October 2016 did not include defendant's payment for the Santa Ana property and requested entry of judgment in a different amount (\$306,500) and the enforcement of the remaining terms stated on the record at the mandatory settlement conference. In support of his request, defendant submitted the reporter's transcript from the October 2016 court hearing that recited the parties' settlement terms on the record.

When the parties' counsel still could not agree to the written terms of the settlement agreement, defendant filed a motion to enforce the settlement in February 2017. The trial court took the motion off calendar and ordered the parties to attempt to reach an agreement on the written settlement terms. When the parties could not agree, once again, defendant subsequently filed another motion to enforce the settlement in May 2017. After several hearings and court discussions, the trial court granted defendant's motion to enforce the settlement but did not adopt defendant's order and judgment regarding the settlement terms. Instead, the court ordered the matter settled pursuant to the terms that the parties had orally expressed on the record at the settlement conference. A judgment was later entered pursuant to the court's order.

Defendant now appeals the trial court's judgment, "'granting'" defendant's motion to enforce the settlement pursuant to Code of Civil Procedure section 664.6,¹ but denying defendant's requested relief. Defendant contends the order and judgment are not supported by substantial evidence.

Plaintiff argues the order and judgment reflect the oral settlement reached by the parties at the October 2016 settlement conference. Plaintiff also filed a motion to augment the record on appeal to include the reporter's transcript from a postjudgment hearing on August 18, 2017. Plaintiff's motion to augment the record is granted to include the reporter's transcript of August 18, 2017.

¹ All further statutory references are to the Code of Civil Procedure.

For reasons stated, we conclude defendant is not an aggrieved party because the court ordered the parties' settlement enforced at defendant's request. We further find that substantial evidence supports the trial court's order affirming the parties' settlement and that the order and judgment conform to the transcript reciting the parties' oral settlement. We therefore affirm the judgment.

II.

FACTUAL AND PROCEDURAL BACKGROUND

On June 22, 1995, Josephine A. Martinez and her husband Henry R. Martinez formed a revocable living trust. The entire estate was to be equally distributed to the trustors' five children, plaintiff, defendant, and three other siblings upon the death of the surviving trustor. While the trust underwent several amendments, the distribution plan never changed. Henry died on September 10, 1997. Josephine passed away on October 20, 2014. Two days before Josephine's death, plaintiff was named successor trustee.

Upon Josephine's death in 2014, the trust retained two real properties, one located in Santa Ana and a second home located in Wildomar. Since October 2001, defendant has resided on the Wildomar property.² In March 2012, Josephine transferred ownership in the Wildomar property to defendant in a signed quitclaim deed that was notarized and recorded in Riverside County. After Josephine's death, plaintiff began distributing trust assets to the other siblings, but did not distribute defendant's portion of the trust assets.

² Defendant claimed to have expended \$41,301.21 for repairs while residing on the Wildomar property.

Due to the trust's transferred asset, on September 23, 2015, plaintiff filed suit against defendant for conversion, fraud and elder abuse. Defendant did not timely file an answer and was unaware that plaintiff's lawsuit had been filed and a default issued. On June 6, 2016, defendant filed a motion to set aside the default, which was granted. After defendant filed an answer to the complaint, the court scheduled a mandatory settlement conference. Prior to the settlement conference, plaintiff had previously distributed \$30,000 to each of the siblings, except defendant. On September 19, 2016, plaintiff sold the Santa Ana property for \$802,098.83.

A. First Mandatory Settlement Conference

On October 6, 2016, the settlement conference was held before the Honorable Judge Gary B. Tranbarger. During settlement discussions, the parties reached an oral settlement that was recited on the record. Defendant agreed to execute a quitclaim deed for the Wildomar property, and in exchange, plaintiff would send a \$30,000 check payable to defendant and defendant's attorney. The parties' counsel were jointly responsible for preparing a written settlement agreement.

Additionally, the parties agreed defendant would be paid \$70,000 upon providing a notarized signature on the written settlement agreement. Defendant also agreed to vacate the Wildomar property within 90 days from the oral settlement and to dismiss the lawsuit. If defendant stayed longer than 90 days at the Wildomar property, defendant would pay \$2,000 a month for rent. If defendant vacated the Wildomar property before

90 days, defendant would receive a third payment of \$69,000 from the trust, which was the balance of previous trust disbursements.

As to the sale of the Wildomar property, the parties agreed defendant would receive a \$7,500 adjustment from the trust (the payment would come out of monies received from the sale of the Wildomar property) and then the trust would distribute the balance of the sale proceeds equally to the five siblings. The balance (from the Santa Ana property) was due to defendant, but plaintiff would not pay the amount until defendant vacated the Wildomar property.

The parties stated they understood and agreed to the settlement terms. An order to show cause (OSC) hearing to follow up on the written settlement was set for November 17, 2016.

B. The Written Settlement Attempts

Shortly before the OSC hearing, defendant retained new counsel. At the OSC hearing on November 17, 2016, the parties' counsel advised the court that they were unable to agree on the terms of the written settlement agreement.

At the end of November 2016, defendant's new counsel provided plaintiff with a quitclaim deed for the Wildomar property and defendant received payment of \$30,000. Defendant's new counsel also prepared three drafts of the proposed written settlement agreement. Defendant's proposed settlement included the language, "plus her Distributive share from the sale of the trust property commonly known as 18102 Shadel Drive, Santa Ana, CA 92705-2656."

Plaintiff's counsel agreed that defendant's proposed agreement was generally acceptable. However, plaintiff's counsel explained to defendant's new counsel that the settlement reached in October 2016 included defendant's distributive share from the sale of the Santa Ana property.

The parties' counsel did not resolve their dispute. On December 21, 2016, defendant's counsel filed a request to enter a judgment and provided a copy of the transcript of the oral settlement, along with defendant's proposed settlement agreements and communications between counsel discussing the terms of defendant's proposed written agreements.

In the meantime, on January 5, 2017, defendant vacated the Wildomar property as agreed to within the 90-day period. Defendant was paid \$69,000 as agreed. The OSC was continued and on January 31, 2016, the court ordered a second mandatory settlement conference.

C. Second Mandatory Settlement Conference

On February 1, 2017, the settlement conference was held before the same settlement judge. According to defendant, Judge Gary B. Tranbarger had no recollection of the terms of the prior settlement.³ The matter could not be resolved. The Honorable Raquel A. Marquez ordered the parties' case back on calendar and set a March 2, 2017, trial setting conference hearing date.

³ Contrary to defendant's contention, the record does not show Judge Gary B. Tranbarger ruled that there was no settlement.

D. Defendant's Motion to Enforce the Settlement

On February 6, 2017, defendant filed a motion to enforce the parties' oral settlement pursuant to section 664.6. Defendant also submitted a proposed order and judgment wherein defendant claimed that an additional sum of \$167,546.30 was due to defendant. Alternatively, defendant moved the court to vacate the parties' oral settlement reached in October 2016 because there was "not a meeting of the minds."

In response to defendant's motion, plaintiff agreed that the court could enforce the settlement. Plaintiff claimed the \$169,000 in payments, plus the final amount from the sale of the Wildomar property, would constitute final distribution of the trust assets. Plaintiff disputed the \$167,546.30 amount requested by defendant because the parties had not agreed to it at the settlement conference.

On April 3, 2017, defendant withdrew the motion to enforce the settlement. On April 19, 2017, the court set another mandatory settlement conference for April 26, 2017.

E. Third Mandatory Settlement Conference

On April 26, 2017, the court was ready to sanction plaintiff because plaintiff had failed to file a proposed judgment. At the hearing, the trial court spent a considerable amount of time urging the parties' counsel to reach a written settlement agreement on their own. The court discussed its tentative ruling with the parties' counsel. The court intended to enforce the settlement reached in October 2016 and directed each party's counsel to draft a proposed written settlement agreement and proposed judgment order that conformed with the court's tentative ruling.

F. Defendant's Renewed Motions to Enforce the Settlement

On May 1, 2017, defendant filed another motion to enforce the parties' settlement. The court set a hearing date of May 30, 2017. On May 17, 2017, defendant filed a proposed judgment pursuant to the court's directive. Additionally, on May 17, 2017, defendant filed a response to the scheduled OSC, and again moved to enforce the parties' settlement. Defendant asserted that defendant was owed \$209,390. Included in this new sum was an additional payment of \$139,390, which defendant claimed was owed from the sale of the Santa Ana property.

Plaintiff thereafter filed a response to defendant's motion to enforce the settlement without a proposed written settlement agreement and proposed judgment order that conformed with the court's tentative ruling to enforce the October 2016 settlement. Plaintiff argued that the amount claimed by defendant was not part of the original settlement agreement and not supported by facts or evidence. Plaintiff's counsel was notified about potential sanctions for his failure to file a proposed judgment.

At the hearing on May 30, 2017, the parties discussed the court's tentative ruling. The court indicated that the proposed orders the court had reviewed were not accurate. The court further explained that the parties had settled the case in October 2016 and the court would evaluate the record from the October 2016 settlement conference to determine if the order accurately stated the settlement reached by the parties. At the time, the court advised the parties that it would consider all documents filed, including defendant's documents filed on May 17, 2017, and plaintiff's documents filed on

May 25, 2017, along with the proposed order and judgment submitted by defendant and continued the OSC hearing to August 17, 2017.

G. The Court's Direction

On June 23, 2017, the court granted defendant's motion to enforce the judgment. The court reviewed defendant's proposed order and rejected it because it did not conform to the parties' oral settlement terms stated in the October 6, 2016, reporter's transcript. The court outlined the terms of the parties' oral settlement as stated in the October 6, 2016, reporter's transcript⁴ and ordered plaintiff's attorney to prepare the order and judgment. The court stated that the \$169,000 settlement that was recited on the record at the settlement conference in October 2016 included defendant's share of the Santa Ana property sale proceeds.

Plaintiff prepared the proposed order and judgment and served a copy of it on defendant's counsel on July 21, 2017. The proposed judgment order stated that defendant "will also receive a \$69,000 payment as the balance from the prior disbursement as a result of sale of the Santa Ana property." On August 4, 2017, defendant filed a motion for reconsideration. The following day, the court signed the order and judgment. The judgment was entered on August 9, 2017. On August 18, 2017, the court reasoned it lacked jurisdiction and denied defendant's motion. Defendant filed a timely notice of appeal.

⁴ The court order erroneously states that "Plaintiff will receive her 20% share" of the sale proceeds from the Wildomar property. The judgment correctly states the "Defendant will receive her 20% share."

III.

DISCUSSION

Defendant argues that the trial court's ruling enforcing the settlement is not supported by substantial evidence. Defendant claims the parties' settlement is unenforceable because the material terms were not agreed to by the parties at the settlement conference.

We disagree that the court erred in enforcing the parties' oral settlement as we will explain. After defendant retained new counsel and before the proposed judgment based on the settlement was submitted, defendant's new counsel sought to include additional terms and amount not stated in the record at the October 2016 settlement conference. After several failed attempts to have counsel agree to the settlement terms, the trial court granted defendant's motion to enforce the settlement but did not adopt defendant's terms stated in defendant's proposed judgment order. The judgment was entered at defendant's request. We therefore first examine whether defendant has standing to appeal.

A. Defendant's Standing to Appeal

"The right to appeal is purely statutory. [Citation.] Code of Civil Procedure section 902 defines 'Who May Appeal' from a judgment. [Citation.] The statute provides "'Any party *aggrieved*' may appeal from an adverse judgment. (Code Civ. Proc., § 902.) The test is twofold—one must be *both a party of record to the action and aggrieved* to have standing to appeal.' (*Shaw v. Hughes Aircraft Co.* (2000) 83 Cal.App.4th 1336, 1342.) Thus, notwithstanding an appealable judgment or order, '[a]n

appeal may be taken only by a party who has standing to appeal. [Citation.] This rule is jurisdictional. [Citation.]’ (*Sabi v. Sterling* (2010) 183 Cal.App.4th 916, 947.) It cannot be waived. (*Marsh v. Mountain Zephyr, Inc.* (1996) 43 Cal.App.4th 289, 295.)” (*Conservatorship of Gregory D.* (2013) 214 Cal.App.4th 62, 67.)

A party is considered “aggrieved” whose rights or interests are injuriously affected by the judgment. (*Conservatorship of Gregory D., supra*, 214 Cal.App.4th at p. 67.) Injurious effect “‘is grounded in the most basic notion of why courts entertain civil appeals. We are here to provide relief for appellants who have been wronged by trial court error.’” (*Id.* at p. 68.)

As a general rule, a party cannot appeal from a judgment in its favor. (*In re Marriage of Brockman* (1987) 194 Cal.App.3d 1035, 1041-1042.) However, an exception to the general rule is that a party may appeal from the unfavorable portion of the judgment when the party is awarded less than demanded. (*Barham v. Southern Cal. Edison Co.* (1999) 74 Cal.App.4th 744, 751.) In *Barham, supra*, the plaintiffs were entitled to have the court consider their cross-appeal, even though they prevailed on several of their causes of action. The *Barham* court found the plaintiffs were aggrieved by the judgment because even though they prevailed against Southern Cal. Edison on their inverse condemnation action, the plaintiffs were required to pay defendant prejudgment interest and additional damages. (*Ibid.*)

Similarly, in *Zarrahay v. Zarrahay* (1988) 205 Cal.App.3d 1, although the judgment appealed from was in plaintiff’s favor, the plaintiff was considered “aggrieved” by that

portion of the judgment that was unfavorable because the plaintiff was awarded less than she would have received if the trial court had valued the defendant's savings and retirement plans differently as plaintiff had requested. (*Id.* at p. 4.)

In contrast with these cases, the defendant in this case was not aggrieved. Instead, after the settlement was reached and read into the record, defendant retained new counsel who later attempted to change the terms and amount of the settlement agreed upon by the parties at the October 2016 settlement conference. This does not provide a basis for finding defendant is an "aggrieved" party with standing to pursue this appeal. This is because the settlement which resulted in the judgment appealed by defendant was agreed to by the parties as recited on the record.

Here, defendant filed motions to enforce the settlement pursuant to section 644.6. Having invited the court to enforce the parties' settlement, defendant cannot be heard to complain that the judgment, which includes the terms agreed upon at the time of the settlement, is unenforceable. In any event, we have reviewed the record and find that the trial court did not err in enforcing the parties' settlement.

B. The Court Did Not Err in Directing a Judgment Be Entered That Conformed With the Parties' Oral Settlement as Stated on the Record

There is substantial evidence that the parties agreed to the stipulated terms reported at the October 6, 2016, hearing. If parties to pending litigation stipulate orally before the court to settle the case, the court, upon motion, may enter a judgment pursuant to the terms of the settlement. (§ 664.6.) "Section 664.6 was enacted to provide a

summary procedure for specifically enforcing a settlement contract without the need for a new lawsuit.’ [Citation.] The statute recognizes that a settlement may be summarily enforced in either of two situations: where the settlement was made orally before the trial court or where it was made in writing outside the presence of the court.” (*Elyaoudayan v. Hoffman* (2003) 104 Cal.App.4th 1421, 1428; see also *Richardson v. Richardson* (1986) 180 Cal.App.3d 91, 97.)

“A settlement agreement is a contract, and the legal principles which apply to contracts generally apply to settlement contracts. [Citation.] An essential element of any contract is ‘consent.’ [Citations.] The ‘consent’ must be ‘mutual.’ [Citations.]” (*Weddington Productions, Inc. v. Flick* (1998) 60 Cal.App.4th 793, 810-811.) ““The existence of mutual consent is determined by objective rather than subjective criteria, the test being what the outward manifestations of consent would lead a reasonable person to believe.’ [Citation.]” (*Id.* at p. 811.) “The parties’ outward manifestations must show that the parties all agreed ‘upon the same thing in the same sense.’ [Citation.]” (*Ibid.*) We must be mindful that “nothing in section 664.6 authorizes a judge to *create* the material terms of a settlement, as opposed to deciding what terms *the parties themselves* have previously agreed upon.” (*Id.* at p. 810.)

A judgment entered pursuant to a stipulation recited in open court “helps ensure the parties’ understanding of the specific terms of the settlement, and their full appreciation of the finality and binding nature of the stipulation.” (*In re Marriage of Assemi* (1994) 7 Cal.4th 896, 906 (*Assemi*)). When a settlement is orally placed on the

record but is conditioned on the execution of a written agreement, the parties may not escape their obligations by refusing to sign a written agreement conforming to the oral terms. (*Elyaoudayan v. Hoffan, supra*, 104 Cal.App.4th at p. 1431.)

Three conditions must be met in order to statutorily enforce a settlement. The trial court must consider (1) whether the material terms of the settlement were explicitly defined, (2) whether the supervising judicial officer questioned the parties regarding their understanding of those terms, and (3) whether the parties expressly acknowledged their understanding of an agreement to be bound by those terms. (*Assemi, supra*, 7 Cal.4th at p. 911; accord, *Conservatorship of McElroy, supra*, 104 Cal.App.4th at p. 544.)

“The standard governing review of such determinations by a trial court is whether the court’s ruling is supported by substantial evidence.” (*Assemi, supra*, 7 Cal.4th at p. 911.) “Consistent with the venerable substantial evidence standard of review, and with our policy favoring settlements, we resolve all evidentiary conflicts and draw all reasonable inferences to support the trial court’s finding that these parties entered into an enforceable settlement agreement and its order enforcing that agreement.” (*Osumi v. Sutton* (2007) 151 Cal.App.4th 1355, 1360.)

In making its determination of whether substantial evidence exists, the trial court may consider the transcript of the hearing by a certified reporter. (*Assemi, supra*, 7 Cal.4th at p. 911.) A section 664.6 motion is appropriate “even when issues relating to the binding nature or terms of the settlement are in dispute, because, in ruling upon the motion, the trial court is empowered to resolve these disputed issues and ultimately

determine whether the parties reached a binding mutual accord as to the material terms.”
(*Assemi, supra*, at p. 905.)

Because this appeal involves the application of statutory law to undisputed facts, we review the trial court’s decision de novo. (See *Elyaoudayan v. Hoffman, supra*, 104 Cal.App.4th at p. 1428.) We make such a substantial evidence determination, however, only after deciding whether the parties meet the statutory conditions of section 664.6. (*Conservatorship of McElroy, supra*, 104 Cal.App.4th at p. 544.)

The statutory conditions of section 664.6 were met. The trial court did not create the material terms of the parties’ settlement but only ordered the settlement enforced pursuant to the parties’ agreed upon terms as stated at the October 6, 2016, hearing. The court’s June 23, 2017, order was not a sua sponte motion to enforce the settlement agreement, it was a sua sponte order directing the parties to include in the proposed judgment the specific terms previously approved and ordered in the settlement. The material terms of the parties’ settlement were explicitly defined on the record in October 2016. Those same terms were restated in the court’s order requesting plaintiff prepare an order and judgment.

The record shows the judicial officer questioned the parties about whether they understood the terms of their oral agreement. Both parties agreed to the settlement terms. Thus, all three statutory conditions were met supporting the trial court’s decision to enforce the oral settlement. We find no error and affirm the trial court’s decision to enforce the settlement. (§ 664.6.)

IV.

REQUEST FOR DISMISSAL

After this case was fully briefed and a tentative opinion had been drafted and mailed to the parties, and after argument had been set, we received a joint stipulation from the parties requesting this appeal be dismissed.

An appellant may not dismiss an appeal as a matter of right. (*Huschke v. Slater* (2008) 168 Cal.App.4th 1153, 1160 [imposing \$6,000 sanctions on an attorney for unreasonable delay in notifying the appellate court that parties had settled and dismissed the underlying case].) Rather, pursuant to California rules of Court, rule 8.244(c)(2), “On receipt of a request or stipulation to dismiss, the court may dismiss the appeal and direct immediate issuance of the remittitur.” Thus, dismissal is discretionary. Here because resolution of this case is fact specific, we grant the requests.

V.

DISPOSITION

The appeal is dismissed. The parties shall bear their own costs.

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

CODRINGTON
J.

We concur:

MILLER
Acting P. J.

SLOUGH
J.